UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re: 655 CORPORATION, Debtor.	Chapter 11 Case No. 06-13020-JNF

JOINT MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 9019 APPROVING SETTLEMENT BETWEEN DEBTOR AND NEW ENGLAND PHOENIX COMPANY, INC.

To the Honorable Joan N. Feeney, United States Bankruptcy Judge:

Debtor 655 Corporation ("Debtor") and New England Phoenix Company, Inc. ("NEPCO") move for an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving the settlement agreement attached hereto as Exhibit A (the "Agreement") by and between the Debtor and NEPCO. In further support of this motion, the parties state:

BACKGROUND

A. The Chapter 11 Filings

1. On September 1, 2006 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Case"). The Debtor continues to manage its business and financial affairs as debtor-in-possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code. Neither a trustee nor an official committee of unsecured creditors has been appointed in this case.

2. No trustee or examiner has been appointed in the Debtor's case.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicate for the relief requested herein is Bankruptcy Rule 9019.

B. Current Business Operations of the Debtor

5. The Debtor owns a parcel of real estate, a portion of which is presently under construction, located at 653-59 East Second Street, South Boston, Massachusetts (the "Property"). The Property consists of eighteen (18) proposed residential condominium units and forty-four (44) parking spaces. The Debtor contemplates the sale of the condominium units (together with accompanying deeded parking spaces) and proportional interest in common areas.

RELIEF REQUESTED

6. The Debtor seeks approval of the Agreement pursuant to Bankruptcy Rule 9019. Pursuant to the Settlement Agreement, NEPCO shall have an allowed secured claim in the amount of $425,000. For the reasons set forth below, the parties believe that the settlement embodied in the Agreement is fair and equitable, falls well within the range of reasonableness, is in the best interest of the Debtor's estate and should be approved.

BASIS FOR RELIEF

A. Background to the Proposed Settlement Agreement

The 655 Corp. Guaranty

7. NEPCO is the holder of two commercial promissory notes, by written assignment from the original payee, Barbara Buckley ("Buckley"). The first, a $100,000.00 Commercial Term Note dated September 5, 2000, was given by Francis K. Fraine to Buckley (the "$100,000 Note") and guaranteed by the Debtor pursuant to a written guaranty of payment (the "655 Corp. Guaranty").

8. The second note is a $600,000.00 Commercial Term Note, also dated September 5, 2000, given by Francis K. Fraine to Buckley (the "$600,000 Note") and guaranteed by, *inter alia*, the Debtor pursuant the 655 Corp. Guaranty.

9. The Debtor's obligations under the 655 Corp. Guaranty are secured by a Mortgage and Security Agreement dated September 6, 2000 given by the Debtor to Buckley filed with the Suffolk Registry District of the Land Court as Document No. 603946 and affecting Certificate of Title No. 114024 (the "$100,000 Mortgage") encumbering the Property. The Debtor's obligations under the 655 Corp. Guaranty are also secured by a Mortgage and Security Agreement dated September 6, 2000, given by, among others, the Debtor to Buckley and recorded with the Suffolk County Registry of Deeds in Book 25330, Page 327 and filed with the Suffolk Registry District of the Land Court as Document No. 603947 and affecting Certificate of Title No. 114024 (the "$600,000 Mortgage"), encumbering, *inter alia*, the Property.

10. By Assignment of Mortgages dated June 8, 2001 (the "Assignment"), Buckley, as mortgagee, assigned to NEPCO, *inter alia*, the $100,000 Mortgage and the $600,000 Mortgage.

11. The Debtor is informed and believes that the $100,000 Note and the $600,000 Note are in default for non-payment of the sums due thereunder, which sums were due and payable in full within eighteen months from their dates of execution, or by March 5, 2002.

The Land Court Actions

12. Prior to the Bankruptcy Case, the parties were actively involved in litigation regarding title to the Property and NEPCO's security interest therein in the matters entitled *New England Phoenix Co., Inc. v. 655 Corporation,* Land Court Department of the Trial Court, Commonwealth of Massachusetts C.A. No. 318987 (the "First Land Court Action") and *New England Phoenix Co., Inc. v. 655 Corporation et al.,* Land Court Department of the Trial Court, Commonwealth of Massachusetts C.A. No. 06 SBQ 17427 06-001 (the "Second Land Court Action").

13. The First and Second Land Court Actions (the "Land Court Actions") arose after someone caused to be registered with the Suffolk District of the Land Court two forged documents: (a) a Discharge of Mortgage and Security Agreement dated February 11, 2002 purporting to discharge the $100,000 Mortgage; and (b) a Partial Release of Mortgage and Security Agreement also dated February 11, 2002 purporting to discharge the $600,000 Mortgage.

14. Before the Land Court issued a judgment in the First Land Court Action, the Debtor commenced the Bankruptcy Case. NEPCO recently obtained relief from the automatic stay and was proceeding with the Land Court Actions.

The Adversary Proceeding

15. On or about November 27, 2006, NEPCO filed its Proof of Claim in the Bankruptcy Case asserting that it holds a secured claim totaling $899,061.19 ("NEPCO's Secured Claim") on the Property by virtue of the $100,000 Mortgage and the $600,000 Mortgage ("NEPCO's Mortgages"). (The $100,000 Note, $600,000 Note, the 655 Guaranty, the $100,000 Mortgage, and the $600,000 Mortgage are hereinafter collectively referred to as the "NEPCO Loan Documents.")

16. Thereafter, on or about December 14, 2006, the Debtor commenced Adversary Proceeding Number 06-1435 entitled *655 Corporation v. New England Phoenix Co., Inc., Cathay Bank (as successor by merger to General Bank), LBM Financial LLC and Barbara Buckley* (the "Adversary Proceeding") pursuant to which the Debtor objected to NEPCO's Secured Claim and sought to avoid the $100,000 Mortgage and the $600,000 Mortgage (the "NEPCO Mortgages") under various theories, including claims of fraudulent conveyance, breach of contract, equitable subordination and recharacterization. The Debtor also named Buckley as a nominal defendant in the Adversary Proceeding as the original owner and holder of the NEPCO Loan Documents.

17. The parties actively litigated the Adversary Proceeding over several months which included repeated briefings and oral argument before the Court. NEPCO sought a dismissal of the

Adversary Proceeding pursuant to NEPCO's Motion to Dismiss the Amended Objection to Claim and Amended Complaint for Determination of Validity, Priority and Extent of Alleged Security Interest and Related Relief (the "Motion to Dismiss"). The Debtor opposed the Motion to Dismiss and the matter is currently pending before the Bankruptcy Court.

The Debtor's Sale Motion

18. In addition, Debtor sought, among other things, authority to sell the Property pursuant to Debtor's Amended Motion for an Order Authorizing the Sale of Real Property as Transactions in the Ordinary Course of Business and Granting Related Relief (the "Sale Motion"). NEPCO stated in Court that, absent the Agreement, NEPCO would have opposed the relief requested in the Sale Motion.

19. Over the past several weeks, the parties entered into arms length negotiations to resolve their disputes over NEPCO's Claim, NEPCO'objection to the Sale Motion and any and all claims that have been asserted, or could have been asserted by the parties in the Bankruptcy Case, the Adversary Proceeding, and the Land Court Actions.

B. The Proposed Agreement

20. Diligence and arms-length negotiations between Debtor and NEPCO have produced the Agreement, subject to Bankruptcy Court approval, the significant portions of which are[1]:

(a) The Agreement will become effective three (3) business days after the date on which an order of the Bankruptcy Court (the "Approval Order") approving the terms thereof is entered on the docket in the Bankruptcy Case (the "Effective Date") and, notwithstanding the filing of any appeal, may be consummated by the Debtor and NEPCO unless the effectiveness of the Approval Order is stayed pending appeal prior to such consummation;

(b) NEPCO shall not object to any sale under the Sale Motion so long as the sales price of the related Condo Unit or Parking Space is in compliance with the sales price parameters set forth in the Sale Motion;

[1] This Motion provides a summary of the Settlement Agreement. The provisions of the Settlement Agreement govern the parties' agreement.

(c) NEPCO's Secured Claim is allowed as a secured claim in the amount of $425,000 and holds a first lien position on the Property pursuant to the NEPCO Mortgages. NEPCO shall have no claim against the Debtor other than NEPCO's Secured Claim;

(d) The Debtor shall pay NEPCO's Secured Claim first before any other claim from the sale proceeds of the Condo Units or Parking Spaces, (as those terms are defined in the Sale Motion), less only those amounts due for real estate taxes, water and sewer charges, and other municipal charges and assessments, levied and assessed against the Property, which are due and payable; the customary and necessary closing costs of such sale (including any upgrades, remedial corrections and repairs contained in the respective purchase and sale agreement provided that the aggregate cost of the upgrades, remedial corrections and repairs does not exceed five percent (5%) of the gross sale price), the broker's commission payable to the Debtor's real estate broker, Jack Conway & Co. ("Conway") pursuant to the terms of the listing agreement between the Debtor and Conway whereby Conway is entitled to a commission of four and one-half percent (4.5%) of the sales price of the Condo Unit with accompanying Condo Unit Parking Space(s) or Separate Parking Space, the sales compensation payable to Vincent J. DiMento ("DiMento") pursuant to the terms of the officer engagement agreement between the Debtor and DiMento (the "Officer Engagement Agreement") whereby DiMento is entitled to one and one-quarter percent (1.25%) of the sales price of the Condo Unit with accompanying Condo Unit Parking Space(s) or Separate Parking Space until NEPCO's Secured Claim is paid in full;

(e) If NEPCO's Secured Claim is not paid-in-full on or before September 1, 2007, interest will accrue on the unpaid balance thereon at an annual interest rate of ten percent (10%) until NEPCO's Secured Claim and any accrued interest thereon are paid in full. Except as modified herein, the NEPCO Loan Documents shall remain in full force and effect until NEPCO's Secured Claim and any accrued interest thereon are paid in full; and

(f) NEPCO and Buckley shall be dismissed from the Adversary Proceeding with prejudice and without costs. Similarly, NEPCO will dismiss or terminate the Land Court Actions.

20. The Debtor has determined that the proposed Settlement Agreement is in the best interests of the Debtor's estate and, in reaching that conclusion, has considered, among other things, the cost, expense and delay associated with litigating the Adversary Proceeding, the Land Court Actions and the Sale Motion. Among other things, the claims asserted in the Adversary Proceeding are fact intensive, there are disputed issues of law as set forth in the parties' respective

briefs in the Adversary Proceeding, and would require the expenditure of considerable time and resources to prepare the matter for trial. In short, the outcome of the Adversary Proceeding is far from certain.

21. Moreover, continued litigation in the Adversary Proceeding would, in all likelihood, delay the Debtor's ability to timely file and obtain confirmation of a plan of reorganization. The Debtor further believes that distributions under the Debtor's plan of reorganization could be substantially delayed pending the outcome of the Adversary Proceeding, resulting in increased interest costs to secured creditors and less recovery for unsecured creditors.

APPLICABLE AUTHORITY

22. Bankruptcy Rule 9019(a) provides, in relevant part, that: "[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise and settlement." Fed. R. Bankr. P. 9019(a). Indeed, settlements and compromises are "a normal part of the process of reorganization." Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)); see also In re Indian Motorcycle co., Inc., 289 B.R. 269, 282 (BAP 1st Cir. 2003) (courts favor settlements and they will rarely be set aside absent fraud, collusion, mistake or other such factors as would undo a contract).

23. To approve a compromise and settlement under Bankruptcy Rule 9019(a), courts have held that the proposed compromise and settlement should be found to be fair and equitable, reasonable and in the best interests of the debtor's estate. See Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S. Ct. 1157 (1968); Jeremiah v. Richardson, 148 F.3d 17 (1st Cir. 1998); see also Adelphia Commc'ns, 327 B.R. at 159 ("The settlement need not be the best that the debtor could have obtained. Rather, the settlement must fall 'within the reasonable range of litigation possibilities,'" (citations omitted)

quoting In re Penn Centr. Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979)). Additionally, the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court. See Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994).

24. In exercising its discretion, the Bankruptcy Court must make an independent determination that the settlement is fair and reasonable. Id. at 122. The Court, however, may consider the opinions of the Debtor in possession and its counsel that the settlement is fair and reasonable. See In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the Bankruptcy Court should exercise its discretion "in light of the general public policy favoring settlements." In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); see also Shugrue, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

25. In determining whether to approve a proposed settlement, a Bankruptcy Court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d. Cir. 1983); accord Purofied Down Prods., 150 B.R. at 522 ("the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation").

26. Bankruptcy Courts have applied the following factors in determining whether a settlement should be approved: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (c) the proportion of creditors who do not object to, or who affirmatively support the proposed settlement; and (d) the extent to which the settlement is truly the product of arm's length bargaining and not the product of fraud or

collusion. See In re Indian Motorcycle co., Inc., 289 B.R. 269, 282 (BAP 1st Cir. 2003); In re Ashford Hotels, Ltd., 226 B.R. 797, 804 (Bankr. S.D.N.Y. 1998).

27. The relevant factors set forth above support a finding that the compromise that is embodied in the Settlement Agreement is fair and equitable, in the best interests of the Debtor, and should be approved. The Debtor and NEPCO propose to presently resolve all claims relating to NEPCO's Secured Claim and the Land Court Actions without further litigation. If these matters are not resolved through the proposed settlement, future litigation before this Court and in the Land Court will result in additional expense for the Debtor with no certainty as to the outcome. Moreover, the Debtor will likely be prohibited from consummating its plan of reorganization while the Adversary Proceeding remains pending, resulting in significant interest accruals on secured claims and a lower recovery for unsecured creditors.

28. The benefits flowing from the Settlement Agreement -- including: (a) allowance of NEPCO's Secured Claim at approximately half of the amount originally claimed in the NEPCO Proof of Claim; (b) the elimination of a material risk of an unfavorable litigation outcome; (c) the avoidance of the significant costs, uncertainties and delays likely attendant to any litigation and possible resulting judgment; and (d) the waiver of any and all claims that NEPCO may possess against the Debtor, except for NEPCO's Secured Claim, all clearly demonstrate that approval of the Settlement Agreement is in the best interests of the Debtor and the Debtor's estate.

29. Additionally, the Settlement Agreement is the product of arm's length bargaining and negotiations between NEPCO and the Debtor. Accordingly, the parties submit that the compromise and proposed settlement is appropriate in light of the relevant factors and should be approved.

MEMORANDUM OF LAW

30. This motion does not present any novel issues of law. Consequently, the parties respectfully request that the Court waive the requirement that they file a memorandum of law. The Debtor and NEPCO reserves the right, however, to file a separate memorandum of law in support hereof or in response to any objection to this motion.

31. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the parties respectfully request that the Court approve the settlement and compromise by and among the Debtor and NEPCO and grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

NEW ENGLAND PHOENIX CO., INC.,

By its Attorneys

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655 CORPORATION

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Dated: August 2, 2007

CERTIFICATE OF SERVICE

I, John C. La Liberte, counsel to New England Phoenix Co., Inc., do hereby certify that on this 2nd day of August, 2007, I served copies of the foregoing pleading by first-class mail, postage pre-paid, upon the parties listed on the service list attached hereto, who were not served via ECF.

/s/ John C. La Liberte
John C. La Liberte

Allstate Painting Co., Inc. 34 Day Street Norwood, MA 02062	
Boston Police Detail Billing Unit P.O. Box 191776 Boston, MA 02119	Boston Water & Sewer Commission 980 Harrison Avenue Boston, MA 02119
Buonasaro Construction Peter Buonasaro 1408 Providence Highway Norwood, MA 02062	C&C Tiling 55 Minot Street, Apt. 1 Boston, MA 02124
Colony Hardware Supply 305 Freeport Street Dorchester, MA 02122	Curragh Construction 94 St. Marks Road Boston, MA 02124
Door Systems, Inc. 120 Alexander Street P.O. Box 511 Framingham, MA 01704	For Extreme Plumbing, Inc. Russell Z. Goldberg, Esquire Falbo, Solari, Goldberg, P.C. 5 Essex Green Drive, Suite 34 Peabody, MA 01960
Lemar Industries 171 Locke Drive Marlborough, MA 01752	Lynco Fire Protection Inc. 19 Grant Avenue Burlington, MA 01803
MA Waste Systems, LLC 300 Centre Street Holbrook, MA 02343	Marr Scaffolding One D Street Boston, MA 02127
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Richie's Insulation, Inc. 111 Old Bedford Road Westport, MA 02790	Sani-kan Portable Sanitation P.O. Box 16400 Rumford, RI 02916
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